

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ALBERT MORENO and DEPARTMENT OF THE AIR FORCE,
BERGSTROM AIR FORCE BASE, Tex.

*Docket No. 96-568; Submitted on the Record;
Issued March 24, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs met its burden of proof in determining that residuals of appellant's February 12, 1993 employment injury had ceased by December 6, 1994.

In the present case, appellant filed a claim alleging that he sustained injuries in the performance of duty on February 13, 1993, when he lost his balance on a tire step. The Office accepted the claim for a lumbar strain and a left elbow contusion. Appellant returned to work in a light-duty position at two hours per day in October 1993 and then stopped working. In a letter dated October 12, 1994, the Office advised appellant that it proposed to terminate his compensation on the grounds that the evidence established that residuals of the employment injury had ceased. By decision dated December 6, 1994, the Office terminated appellant's compensation. Appellant requested reconsideration, and by decision dated September 28, 1995, the Office denied modification of the prior decision.

The Board has reviewed the record and finds that the Office met its burden of proof in terminating appellant's compensation.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to his employment, the Office may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment injury.¹

In the present case, the Office referred appellant for examination by Dr. William F. Dossman, a neurosurgeon. In a report dated May 26, 1994, Dr. Dossman provided a history and results on examination, stating "there are no objective medical evidence of a persisting lumbar

¹ Patricia A. Keller, 45 ECAB 278 (1993).

strain or contusion of the left elbow. The patient has some subjective complaints of pain in both locations.” Dr. Dossman indicated that appellant had an underlying lumbar osteoarthritis which could account for his continuing low back pain, stating that “this problem predated his injury and at the most, in my opinion, the injury might have aggravated the situation.” Dr. Dossman reported that appellant should have responded to treatment provided and been able to return to work, but with continuing complaints of lower back pain, he anticipated that appellant would not be able to reach full recovery and be able to return to the duties of an auto mechanic.

At this point the Office declared a conflict in the medical evidence. With regard to whether a conflict existed, the Board notes initially that Dr. Dossman does not provide a clear opinion on the issue of employment-related residuals. He stated that he did not find objective evidence of a persisting lumbar strain, then he indicated that appellant had an underlying lumbar osteoarthritis, which the employment injury “might have aggravated,” and he did not anticipate that appellant would be able to return to full duty. Dr. Dossman does not clearly indicate whether he believed that any aggravation by the employment injury had ceased. Moreover, the record does not contain probative medical evidence from appellant’s attending physicians, regarding the employment injury. In a report dated March 1, 1994, Dr. Gerald Q. Greenfield, Jr., an orthopedic surgeon, indicated that appellant was significantly overweight, had no evidence of neurologic deficit, and that x-rays showed degenerative joint disease in the lumbar spine. Dr. Greenfield does not discuss the employment injury. In a form report (CA-20a) dated January 17, 1994, Dr. Greenfield had checked a box “yes” that appellant’s condition was causally related to employment, but this evidence is of little probative value.²

The Board therefore finds that Dr. Dossman’s report did not create a conflict in the medical evidence, on the issue of continuing residuals of the February 13, 1993 employment injury. The referral to Dr. B. Peyton Delaney, an internist and neurologist, is therefore as a second opinion physician, not an impartial medical specialist.

In a report dated September 15, 1994, Dr. Delaney provided a history and results on examination. He indicated that he found no objective findings of lumbar strain or left elbow contusion. Dr. Delaney further stated, “patient may have had an initial left elbow contusion and lumbar strain, but these would not continue for a year and a half by any stretch of the imagination. It is my opinion, the reason the recovery has been prolonged is because there is no organic problem underlying now and functional malingering aspects are in the forefront.” Dr. Delaney also stated that he did not feel there was a disability related to the employment injuries, and there were no restrictions based on a neurological perspective.

The Board finds that Dr. Delaney’s opinion represents the weight of the medical evidence. He provided a complete report indicating that residuals of the employment injury had ceased, and that continuing subjective complaints were related to a functional condition not causally related to employment. The record does not contain a reasoned opinion supporting that appellant continued to have residuals of the employment injuries. In a treatment note dated November 14, 1994, Dr. Greenfield indicated that appellant exhibited lots of functional signs, and noted that, like the Office referral physicians, he had not been able to find anything objective.

² See *Barbara J. Williams*, 40 ECAB 649, 656 (1989).

Dr. Greenfield indicated that appellant fit into the sedentary light level of work, without providing an opinion as to whether any restrictions were causally related to the employment injury. The Board therefore finds that the probative evidence of record is represented by Dr. Delaney, and the Office met its burden of proof in terminating compensation on December 6, 1994.

Once the Office has met its burden in terminating compensation, the burden shifts to the claimant to establish any continuing condition or disability as causally related to the employment injury.³ Appellant submitted a brief report dated July 20, 1995, from Dr. Arvo Neidre, an orthopedic surgeon, noting that appellant had an on-the-job injury in 1993 and “as far as I am aware the continuing back pain and problems that he has is directly related to the on-the-job injury that he had in 1993.” Dr. Neidre does not provide a complete history, nor does he provide medical reasoning to support his opinion on causal relationship. In a report dated July 31, 1995, Dr. Greenfield stated that since his employment injury appellant has had back, leg and elbow pain, and “all of these are related according to [appellant’s] history and his clinical examination to the injury in February of 1993.” Dr. Greenfield does not provide any medical rationale or explanation to support his opinion and therefore it is of diminished probative value to the issue presented.⁴ The Board therefore finds that appellant has not submitted evidence establishing a continuing employment-related condition after December 6, 1994.⁵

The decisions of the Office of Workers’ Compensation Programs dated September 28, 1995 and December 6, 1994 are affirmed.

Dated, Washington, D.C.
March 24, 1998

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott

³ *George Servetas*, 43 ECAB 424 (1992).

⁴ Medical reports not containing rationale on causal relation are entitled to little probative value and are generally insufficient to meet an employee’s burden of proof. *Ceferino L. Gonzales*, 32 ECAB 1591 (1981).

⁵ The record contains additional evidence submitted after September 28, 1995. Since this evidence was not before the Office at the time of its final decision, the Board cannot review such evidence on this appeal. 20 C.F.R. § 501.2(c).

Alternate Member